

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-45229-RJK
Chapter 7

David Gawreluk and Pamela Gawreluk,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Dorraine A. Larison, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One Wisconsin, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **2:00 pm on Thursday, October 28, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than Monday, October 25, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, October 19, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Bank One Wisconsin seeks relief from the automatic stay of 11 U.S.C. § 362 with respect to certain personal property owned by Bank One Wisconsin.

5. The petition commencing this Chapter 7 case was filed on September 17, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Bank One Wisconsin owns and leases to Debtor(s) a 2002 Jeep Liberty, vehicle identification number 1J4GL58KX2W153049 (the "Vehicle").

7. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Lease") and the Title Documents are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Lease for the months of August through September 2004, totaling \$1,287.53 plus late charges, have not been made by the Debtor(s).

9. No evidence has been provided to verify insurance coverage on the Vehicle. The balance due under the Lease is \$22,010.87 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$17,750.00.

10. Bank One Wisconsin's interest is depreciating, while Debtor(s) are failing to make payments. Bank One Wisconsin does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Lease or otherwise provide Bank One Wisconsin with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Bank One Wisconsin to relief from the stay.

12. Bank One Wisconsin requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, T. Johnson, or some other representative of Movant, will testify on behalf of Bank One Wisconsin.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Bank One Wisconsin will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank One Wisconsin respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Bank One Wisconsin to terminate the Lease, take possession and dispose of the vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable and (iii) granting such other relief as may be just and equitable.

Dated: October 6, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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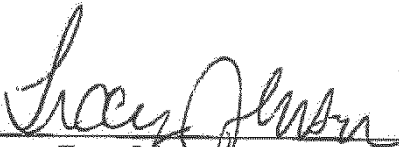
David Gawreluk and Pamela Gawreluk,

Debtor(s).

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury
that the following is true and correct to the best of my knowledge, information and belief:


Dated: 10/15/04



Tracy Johnson
Bankruptcy Specialist
Bank One Wisconsin

Oct 1 2004 15:03 P.03

Page 2 of 5



BANK ONE

BANK ONE AUTOLEASE

LEASE TO OWN OR PURCHASE - 2.99% PER MONTH

1. VEHICLE INFORMATION

DRIVER'S LICENSE: DRIVER'S LICENSE NUMBER: <u>XXXXXXXXXX</u> EXPIRATION DATE: <u>MM/YY</u>	PERSONAL IDENTIFICATION: SOCIAL SECURITY NUMBER: <u>XXXXXXXX-XX</u> DATE OF BIRTH: <u>MM/DD/YY</u> CURRENT ADDRESS: <u>XXXXXXXXXX</u>	LEASE INFORMATION: LEASE TERM (MONTHS): <u>36</u> MONTHLY PAYMENT: <u>\$XXX.XX</u> FIRST PAYMENT DUE: <u>MM/YY</u>
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2. FINANCIAL INFORMATION

Are you currently employed? ☐ Yes ☐ No

Employer Name: _____ Address: _____

Annual Income: \$ _____

Other Income Sources: _____

3. VEHICLE SPECIFICATIONS

Year: _____ Make: _____ Model: _____

Color: _____ Mileage: _____

Engine: _____ Transmission: _____

4. SIGNATURES

Signature of Lessee: _____ Date: _____

Signature of Bank One Representative: _____ Date: _____

5. ADDITIONAL INFORMATION

Comments: _____

6. PAYMENT SCHEDULE

Month	Payment	Total Paid	Balance Due
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
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7. DISCLOSURES

This lease agreement is subject to the terms and conditions set forth in the Bank One Auto Lease Agreement. The lessee agrees to maintain the vehicle in good condition and to return it at the end of the lease term.

8. SIGNATURES

Signature of Lessee: _____ Date: _____

Signature of Bank One Representative: _____ Date: _____

9. ADDITIONAL INFORMATION

Comments: _____



BANK ONE ARIZONA

Fax:602-674-7194

Oct 1 2004 15:09

P.02


(Page 2 of 3)

STATE OF MINNESOTA					
CERTIFICATE OF TITLE FOR A MOTOR VEHICLE					
VEHICLE IDENTIFICATION NUMBER 1J4GL5AKX2W153049	YEAR 08	MAKE JEEP	MODEL 4M LTB	TITLE NUMBER H3560N509	
DATE ISSUED 10/24/01	COPIES 31	TAX BASE 023305	DOOR 04	PLATE NUMBER 6Z866D	CENTRAL OFFICE USE ONLY
NEW		10/13/01	EXP 10		
NO SECURITY INTERESTS		DOB	OWNER		
BANK ONE WISCONSIN					
PO BOX 2023 MILWAUKEE WI 53201-2023					
<p>ODOMETER DISCLOSURE STATEMENT: I (WE) CERTIFY THAT THE ODOMETER NOW READS _____ AND THATS MILE AND TO THE BEST OF MY KNOWLEDGE THE ODOMETER MILEAGE IS:</p> <p><input type="checkbox"/> ACTUAL MILEAGE</p> <p><input type="checkbox"/> EXCEEDS MECHANICAL LIMITS OF ODOMETER</p> <p><input type="checkbox"/> NOT ACTUAL MILEAGE - WARNING ODOMETER DISCREPANCY</p>					
<p>DAMAGE DISCLOSURE STATEMENT: TO THE BEST OF MY KNOWLEDGE THIS VEHICLE:</p> <p><input type="checkbox"/> HAS <input type="checkbox"/> HAS NOT (CHECK ONE) SUSTAINED DAMAGE IN EXCESS OF TEN PERCENT (10%) OF THE ACTUAL CASH VALUE.</p> <p>POLLUTION SYSTEM DISCLOSURE STATEMENT: TO THE BEST OF MY KNOWLEDGE THE POLLUTION CONTROL SYSTEM ON THIS VEHICLE INCLUDING THE RESTRICTED BARIUM PIPE:</p> <p><input type="checkbox"/> HAS <input type="checkbox"/> HAS NOT (CHECK ONE) BEEN REMOVED, ALTERED OR RENDERED INOPERATIVE.</p> <p>Assignment: I (we) certify that this vehicle is free of all security interests, liens, and claims, and assign the registration fee and vehicle fee.</p>					
SELLER'S PRINTED NAME(S)		DATE OF SALE	BUYER'S PRINTED NAME(S)		
 0780000767671 02 301 081034 02 JEEP LIBERTY SAWRELUK, DAVID R		1/1/02	BUYER'S ADDRESS BUYER'S SIGNATURE(S)		
PS2700-11		DRIVER AND VEHICLE SERVICES DIVISION 445 MINNESOTA STREET, ST. PAUL, MINNESOTA 55101 PHONE 651-297-2128 TTY 651-292-4500 www.dmv.state.mn.us			

KEEP IN A SAFE PLACE. ANY ALTERATION OR ERASURE VOID. THIS TITLE.

SELLER'S NOTICE OF SALE

When you sell this vehicle, you are responsible to file the information below with the Department of Public Safety within 10 days. You may file over the Internet at www.dps.state.mn.us or complete this post card and mail. This notice is not required if sold to a licensed dealer. MN Statute 168A.10

	
Title Number H3560N509	Vehicle Identification Number 1J4GL5AKX2W153049
Date of Sale	
Purchaser's Driver License Number (if any)	
Purchaser's Full Name	Purchaser's Date of Birth
Purchaser's Address	
City	State Zip Code

PLEASE PRINT

MINNESOTA MOTOR VEHICLE REGISTRATION CARD

VIN 1J4GL5AKX2W153049	MAKE JEEP	MODEL 4M LTB
2008 VEHICLE WEIGHT/MSRP VALUE 023305	PLATE # 6Z866D	EXP 10/31/02
STOCKER # 0217466D	TAX 317.00	
RECORDED OWNERS BANK ONE WISCONSIN		
PO BOX 2023 MILWAUKEE WI 53201-2023		

UNITED STATES BANKRUPTCY COURT
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In re:

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Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Bank One Wisconsin submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One Wisconsin owns and leases to Debtor(s) a 2002 Jeep Liberty with a vehicle identification number 1J4GL58KX2W153049 (the "Vehicle"). Payments due under the terms of the Lease for the months of August through September 2004, totaling \$1,287.53 plus late charges, have not been made by the Debtor(s). The balance due under the Lease is \$22,010.87 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$17,750.00. No evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Leases between the Debtor(s) and Bank One Wisconsin and Bank One Wisconsin has otherwise not been provided with adequate protection of interest in the Vehicle or adequate assurance of future performance under the Lease. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Bank One Wisconsin to relief from the stay. United Savings Assn. of Texas v. Timbers of

Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988). In Re Reinbold v. Dewey County Bank, 942 F. 2d 1304, 1306 (8th Cir. 1991)

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$22,010.87 as of the date hereof. The fair market value of the Vehicle is approximately \$17,750.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization

CONCLUSION

For all the reasons set forth herein, Bank One Wisconsin is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to take possession of and terminate its lease regarding the Vehicle in accordance with Minnesota law.

Dated: October 6, 2004

Respectfully submitted,

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

David Gawreluk and Pamela Gawreluk

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-45229-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Michael J. Iannacone
8687 Eagle Point Blvd
Lake Elmo, MN 55042

(Trustee)
Doraine A. Larison
1010 W. St. Germain Rm 600
St. Cloud, MN 56301

(Debtor(s))
David Gawreluk
13018 Sixth Avenue Circle
Zimmerman, MN 55398

Pamela Gawreluk
13018 Sixth Avenue Circle
Zimmerman, MN 55398

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: October 6, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Chapter 7

David Gawreluk and Pamela Gawreluk,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Thursday, October 28, 2004 on the motion of Bank One Wisconsin seeking relief from the automatic stay of 11 U.S.C. §362.

Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Bank One Wisconsin to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Bank One Wisconsin, and Bank One Wisconsin is authorized to terminate its lease and take possession of the subject 2002 Jeep Liberty, vehicle identification number 1J4GL58KX2W153049 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge